



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W.S. Spotswood & Sons, Inc.

File: B-236713.2

Date: November 16, 1989

DIGEST

Agency decision to cancel small business-small purchase set-aside and complete the purchase on an unrestricted basis was improper where the agency received a reasonable quotation from a responsible small business.

DECISION

W.S. Spotswood & Sons, Inc., protests the issuance of a purchase order to Ingersoll-Rand, under request for quotations (RFQ) No. DLA700-89-T-0133, a small business-small purchase set-aside issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for three pneumatic powered chain hoists. Spotswood contends that DLA improperly made the award to a large business concern.

We sustain the protest.

Nine quotes were received by the October 25, 1988, closing date under the RFQ, which was issued pursuant to the small purchase procedures under part 13 of the Federal Acquisition Regulation (FAR). Ingersoll-Rand, a large business, submitted the lowest quote of \$4,232.25. Spotswood, a small business, was second low at \$4,452.60. No action was taken until July 20, 1989, when DLA contacted Ingersoll-Rand to see if its price remained unchanged. Ingersoll-Rand replied that its price had increased to \$4,444.86. On July 21, DLA canceled the small business-small purchase set-aside because Ingersoll-Rand, a large business, was the low offeror. DLA issued a purchase order to Ingersoll-Rand on August 5.

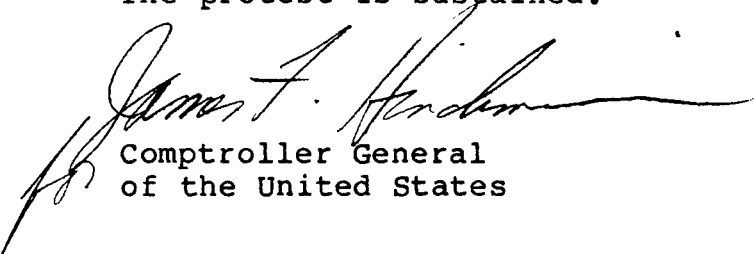
In its agency report filed with our Office in response to Spotswood's protest, DLA acknowledges that it improperly canceled the set-aside. FAR § 13.105(d)(3) provides that the contracting officer may cancel a small business-small purchase set-aside and complete the purchase on an

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unrestricted basis only if a reasonable quotation from a responsible small business is not received. DLA reports that since Ingersoll-Rand's price, which was only \$7.74 less than Spotswood's, was determined to be reasonable, Spotswood's quotation was also clearly reasonable, and the set-aside should not have been canceled.

DLA advises that since Ingersoll-Rand has completed performance under the purchase order, corrective action is impracticable at this time. In these circumstances, Spotswood is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1), and (2) (1989). Spotswood should submit its claim for costs directly to the agency.

The protest is sustained.



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